

Facts and Question 3: A tax-option (S) corporation which is directly or indirectly a beneficiary under its officer's life insurance policy pays the premiums on that policy. For federal income tax purposes, the corporation's premium payments are not deductible pursuant to IRC section 264 and Treasury Regulation §1.264-1(b). What is the Wisconsin treatment of the premium payments?

Answer 3: The officer's life insurance premiums are treated as a non-deductible expense, the same as for

federal purposes. Since this expense is related to nontaxable income, it must be reported in the same account where the nontaxable income would be reported.

For the 1987 taxable year and thereafter, the officer's life insurance premiums are reported as follows:

- If the corporation does not have accumulated earnings and profits, the corporation must subtract the premium payments from its Wisconsin AAA.

- If the corporation has accumulated earnings and profits, the corporation must subtract the premium payments from its Wisconsin OAA.

For 1986 and prior taxable years, the corporation, whether or not it had accumulated earnings and profits, was required to subtract the officer's life insurance premiums from its Wisconsin AAA. □



Private Letter Rulings

"Private letter rulings" are written statements issued to a taxpayer by the department that interpret Wisconsin tax laws to the taxpayer's specific set of facts. Any taxpayer may rely upon the ruling to the same extent as the requestor, provided the facts are the same as those set forth in the ruling.

The number assigned to each ruling is interpreted as follows: The "W" is for "Wisconsin," the first two digits are the year the ruling becomes available for publication (80 days after the ruling is issued to the taxpayer), the next two digits are the week of the year, and the last three digits are the number in the series of rulings issued that year. The date following the 7-digit number is the date the ruling was mailed to the requestor.

Certain information contained in the ruling that could identify the taxpayer requesting the ruling has been deleted. Wisconsin Publication 111, "How to Get a Private Letter Ruling From

the Wisconsin Department of Revenue," contains additional information about private letter rulings.

The following private letter ruling is included:

Sales and Use Taxes

Advertising, video production,
and script writing
W9353006, October 8,
1993 (p. 29)

✻ W9353006, October 8, 1993

Type Tax: Sales and Use Taxes

Issue: Advertising, video production, and script writing

Statutes: Sections 77.51(14)(intro.) and 77.52(1) and (2)(a), Wis. Stats. (1991-92)

This letter responds to your request for a private letter ruling.

Facts

You have an understanding with a local cable television system to sell advertising that will be placed on the cable television system during certain times (local access time).

You contract with various companies (clients) for the production and airing of advertisements on the cable television system for a fee. This fee may or may not separately state the advertisement production and air time.

Your client provides you with an advertising concept and any script. You contract with a video company to have the advertisement produced. The video company does all filming and editing. Once production is completed, the advertisement is transferred to you and you provide it to the cable television system for airing. The video company bills you for the production of the advertisement.

Occasionally, your client will request that the script for the advertisement

be provided by you. You have the video company develop the script. The video company, in addition to the advertisement production, bills you for the "script writing," which you bill to your client.

You state that many television stations and newspapers produce advertisements in-house with the sale of air time. These television stations may bill clients for the production and air time together or separately.

Request

You ask the following:

1. Is your charge to a client for production of an advertisement, script writing, and air time subject to Wisconsin sales or use tax?
2. Does the answer to Question 1 differ if the charge for production of the advertisement and script writing is not separately stated from the air time?
3. Is the charge to you by the video company for script writing and advertisement production subject to Wisconsin sales or use tax?
4. Is the charge by a television station or newspaper for production of an advertisement and air time or advertising space subject to Wisconsin sales or use tax?

Ruling

1. The charge to your client for producing an advertisement is subject to Wisconsin sales or use tax. A charge for script writing which results in the production of an advertisement is also subject to Wisconsin sales or use tax.

The charge for air time is not subject to Wisconsin sales or use tax.

2. How you bill for production of an advertisement, script writing, and air time does not affect the taxability of the sale of these items. If the items are not separately stated, an allocation of the total charge between taxable and nontaxable items is required.
3. The charge by the video company for production of an advertisement and script writing may be purchased without Wisconsin sales or use tax as tangible personal property and services for resale.
4. The charge by a television station for producing an advertisement is subject to Wisconsin sales or use tax whether included with the charge for air time or stated separately. The television station must allocate the total charge and impose Wisconsin sales or use tax on that portion of the charge which is for production of the advertisement.

The charge by a newspaper for producing an advertisement which will be used in producing the newspaper is exempt from Wisconsin sales or use tax.

Analysis

Production of advertisement, script writing, and air time

Section 77.52(1), Wis. Stats. (1991-92), provides for the imposition of Wisconsin sales tax on gross receipts from the retail sale of tangible personal property.

Section Tax 11.70(2)(a), Wis. Adm. Code, provides that finished art is tangible personal property. Finished art is defined in sec. Tax 11.70(1)(a), Wis. Adm. Code, as final art used for actual reproduction by photomechanical or other processes, or for display purposes. Finished

art includes a taped commercial or advertisement.

Since the produced advertisement is finished art which is tangible personal property, gross receipts from the sale of the produced advertisement are subject to tax.

Section Tax 11.70(4), Wis. Adm. Code, provides that Wisconsin sales or use tax applies to the total gross receipts from the sale of tangible personal property (i.e., finished art) without any deduction for any cost element which becomes a part of the sales price. These elements include copy or any other labor or service cost incurred in the production of that property. Therefore, the total gross receipts from the sale of the produced advertisement are not reduced by the charge for script writing becoming a part of the produced advertisement.

Section Tax 11.70(3)(f), Wis. Adm. Code, provides that charges for obtaining media space and time are not subject to Wisconsin sales or use tax.

Method of invoicing

Section Tax 11.70(6), Wis. Adm. Code, provides that a fee representing both taxable and nontaxable sales shall be reasonably allocated between taxable and nontaxable sales.

If you charge a client a lump sum for production of an advertisement and air time, the charge must be allocated between the production of the advertisement and the charge for the air time and sales tax imposed on the charge for production of the advertisement.

Sales for resale

Section 77.51(14)(intro.), Wis. Stats. (1991-92), defines a sale at retail, which is subject to Wisconsin sales

or use tax, as the transfer of ownership of, title to, possession of, or enjoyment of tangible personal property or taxable services for use or consumption but not for resale as tangible personal property or services.

Since the production of the advertisement and script writing will be resold by you to your client, the sale by the video company of these items to you is not a sale at retail subject to Wisconsin sales or use tax. You should provide the video company

with a properly completed resale certificate when purchasing the advertisement and script writing without Wisconsin sales or use tax.

Sales by television stations and newspapers

The analyses as described under "Production of advertisement, script writing, and air time" and "Method of invoicing" apply for sales of air time, production of advertisements, and script writing by television stations.

With respect to newspapers, sec. 77.54(2m), Wis. Stats. (1991-92), provides an exemption from Wisconsin sales or use tax for gross receipts from the sale of tangible personal property that is consumed or loses its identity in the manufacture of newspapers. Since an advertisement, including any script writing, is economically consumed in the manufacture of the newspaper, the charge for production of the advertisement and script writing is exempt from Wisconsin sales or use tax. □